

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RICHTONE DESIGN GROUP LLC,

Plaintiff,

-against-

MARY SULLIVAN KELLY

TRUE PILATES BOSTON LLC,

Defendants/Counter-Plaintiffs/
Third Party Plaintiffs,

-against-

RICHTONE DESIGN GROUP, LLC,

Counterclaim Defendant,

and

SEAN GALLAGHER,

Third Party Defendant.

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Case No. 22-cv-1606 (KMK) (AEK)

**MOTION TO REQUIRE WITHDRAWAL OF DOCUMENT 36-1
AND FILE THE DOCUMENT UNDER SEAL**

Plaintiff moves to require the withdrawal of Document 36-1, which was filed on PACER albeit clearly marked as Confidential. Refiling under seal will not alter the Court's ability to assess the purported controversy over discovery.

Attached as exhibit A is the Protective Order executed by the parties on November 8,

2022 and ordered by the Court on November 28, 2022.

Your Honor's Rule concerning Protective Orders is:

2. B. Confidentiality Stipulations and Protective Orders. In cases where confidential information will be exchanged, the parties must use Judge Krause's model Confidentiality Stipulation and Proposed Protective Order. The parties may apply for a protective order that differs from the model by submitting a letter via ECF and attaching the proposed order, showing in a blackline comparison how the proposed order differs from the Court's model. The letter must explain why the modifications are needed and note any disagreements between the parties regarding the modifications from the Court's model.

Plaintiff believed that because no confidential information had been exchanged to the date when Document 36-1 was posted, and when Plaintiff had marked and upon further verification during discovery withdrawn the Confidentiality designation, that both parties were operating under the assumption that Your Honor's model Order was to be honored. Instead, after initiating a Meet and Confer, Defendants submitted what should have been the basis of the Meet and Confer as part of its Motion to Compel (Doc # 36).

Attached as Exhibit B is Defendants' initial letter concerning the alleged inadequacies in the Confidential Responses to Requests for Admission

Attached as Exhibit C is Plaintiff's Letter to Defendants' counsel November 17, 2022 in response to the original Request for a meet and confer over the Confidential Responses to Requests for Admission

Your Honor's Rules concerning sealing and redactions is:

5. A. Sealing/Redactions Not Requiring Court Approval. Rule 5.2 of the Federal Rules of Civil Procedure describes sensitive information that must be redacted from public

court filings without seeking prior permission from the Court. Parties also should consult Rules 21.3 and 21.4 of the ECF Rules & Instructions.

B. Sealing/Redaction Requiring Court Approval.

Motions or letter motions for approval of sealed or redacted filings in civil and miscellaneous cases and the subject documents, including the proposed sealed document(s), must be filed electronically through the ECF system in conformity with the Court's standing order, 19-mc-583, and Section 6 of the ECF Rules & Instructions.

The motion must be filed in public view, must explain the particular reasons for seeking to file that information under seal, and should not include confidential information sought to be filed under seal. Supporting papers must be separately filed electronically and may be filed under seal or redacted only to the extent necessary to safeguard information sought to be filed under seal.

The proposed sealed document must be contemporaneously filed under seal in the ECF system and electronically related to the motion. The summary docket text, but not the sealed document, will be open to public inspection and should not include confidential information sought to be filed under seal.

Defendants' counsel did not consult Plaintiff's counsel before Posting Document 36-1 which is entitled Confidential Responses to Requests for Admission. Moreover, Defendants earlier today doubled down on its position when offered options concerning the Document.

Attached as exhibit D is an email exchange with the Court on November 28 and November 29, 2022, in which Defendants' counsel rejects the option to redact and resubmit Document 36-1.

Apparently, Defendants' position is that it can ignore the Confidential marking of the response and unilaterally determine to publish them because there might be some images in 36-1 which are not owned by Plaintiff (although their copyright may be owned by some third party). The request to redact the photographs requires little time or effort on the part of Defendants. Their publication on the Court website provides Defendants' supporters another opportunity to

download and spread copyrighted photographs across the Internet and harms Plaintiff's efforts to prevent their publication on the Internet.

Dated: New York, New York
November 29, 2022

Respectfully Submitted,

/Charles H. Knull/

Charles H. Knull
KNULL P.C.
Attorney for Plaintiff
305 Broadway, 7th
Floor New York. NY
10007
chk@knullpc.com
tel. (646)) 741-5614

Romeo J. Salta, Of counsel

Attorneys for Plaintiff